

REMARKS

Reconsideration of the issues raised in the above referenced Office Action is respectfully solicited.

The objections to the drawings have been considered. Figure 4 has been added. Figure 4 is identical in all respects to Figure 2, except that a representation of a hologram and a window for viewing the contents of the container have been added.

Basis for Figure 4 is provided in paragraphs [0037] and [0075] of Applicant's specification. Paragraph [0075] has been amended to include reference numerals. No new matter has been entered.

Approval of drawing Figure 4, the amendments to the specification, and withdrawal of the objections to the drawings is respectfully requested.

Claims 1, 2, 13, 24, 26, 34 and 35 have been amended. Claims 3, 11, 21, 28, 36 and 37 have been cancelled.

The rejection of Claims 1, 2, 4-10, 12-20, 22-27, 29-31, 33, 34 and 36 under 35 USC §103 as being unpatentable over JP 56-156777 (JP '777) in view of McLaughlin (US Pat. No. 6 210 766) has been considered.

As discussed in paragraph [0004] of Applicant's specification, the JP '777 collapsible container can consist of a laminate of stiff paper and of polyethylene applied to both sides thereof. The collapsible container is opaque.

McLaughlin discloses a holographic decorated tube package. Figure 1 of McLaughlin shows a laminate 10 that includes outer layer 12, holographic film layer 14, first inner barrier 16 and second inner barrier 22. The outer layer 12 must be transparent to enable viewing of the holographic film layer 14 therethrough. The laminate 10 forms a tube body 32 that is secured to a tube shoulder 34, which includes an externally threaded exit nozzle 36. There is no disclosure or suggestion that the layers 14, 16 and 22 can be transparent. The holographic effect can be formed on the surface of the

film layer 14 wherein the film layer 14 itself is not transparent.

Further, McLaughlin is a toothpaste type container, which does not return to its position after being squeezed to remove a portion of the stored material. Thus McLaughlin does not disclose a dimensionally stable container.

Applicant's Claim 1 recites a collapsible container that comprises "at least two transparent layers" and that is "formed from a transparent and fluid tight material which can be shaped for bending the opening edge and is dimensionally stable after the shaping".

As discussed above, JP '777 and McLaughlin do not disclose or suggest having a container that is formed from transparent layers of material. JP '777 discloses an opaque container and McLaughlin discloses a decorated tube package having a transparent outer layer.

The Office Action states that it would have been obvious to make the outer or any of the layers "transparent to allow the user to see the decoration or to see the content of the container". There is no disclosure in the applied prior art of a need for viewing the contents of the container. The idea of decorating opaque containers for some purposes is admittedly well known. Applying a transparent outer layer as in McLaughlin does not change the opaque structure of JP '777. Further, permitting viewing of the contents of the container does not provide a decorative effect, but instead enables a purchaser to see a product. Thus there is no motivation, absent Applicant's specification, to modify the combination of JP '777 and McLaughlin to provide a container that is formed from a transparent material.

Further, there is no motivation to combine McLaughlin with JP '777 to obtain Applicant's invention. JP '777 is directed to a collapsible container that presumably has dimensional stability and presumably will return to its original shape. The tube package of McLaughlin, however, deforms and tends to remain in the new shape to a significant

degree. Further, McLaughlin is directed to a toothpaste tube package, which has a different use and structure, as the tube package is resealable by a threaded cap, as compared to JP '777, which has a removable top that does not appear to be recloseable. Therefore, in view of the different uses and physical properties of JP '777 and McLaughlin, there is no motivation to combine the references to obtain Applicant's claimed invention.

Further, Applicant's Claims 2, 4-10, 12-20, 22-27, 29-31, 33, 34 and 36 include other features that distinguish the combination of JP '777 and McLaughlin. For example, Applicant's Claim 5 recites that three of said layers are transparent. As discussed above, JP '777 and McLaughlin do not disclose the container as being transparent therethrough at any location thereon.

Applicant's Claim 25 recites that "the print leaves open a control window on the wall". There is no disclosure or suggestion in JP '777 or McLaughlin of a control window.

Applicant's Claim 26 recites that "the print is only visible after at least a part of the food is removed". This feature is not disclosed or suggested in the applied prior art.

Applicant's Claim 30 recites that "the container is capable of being stacked and unstacked". This feature clearly is not present in the closed end tube of McLaughlin.

Applicant's independent Claim 34 has been amended to include the features of dependent Claim 37. Thus, the rejection based on JP '777 and McLaughlin is now moot, as an additional reference was applied in the Office Action for the subject matter of Claim 37.

In view of the above, reconsideration and allowance of independent Claim 1, and Claims 2, 4-10, 12-20, 22-27, 29-31 and 33 dependent therefrom, is respectfully requested.

The rejection of Claims 32 and 35 under 35 USC §103 as being unpatentable over JP '777 in view of McLaughlin as

applied to Claims 1 and 34 respectively, and further in view of Halligan (U.S. Pat. No. 4 574 987) has been considered.

Halligan discloses combining inner and outer pre-formed cone-shaped members that are nested and bonded together over less than 20% of their adjacent surface areas to provide unbonded areas that function as an insulative heat barrier.

Even if the packaging of Halligan were combined with JP '777, which Applicant's disagree with, Applicant's claimed invention would not result.

Applicant's claimed invention does not include two separate cone-shaped bodies wherein one is made of plastic film and another of paper. Moreover, Halligan does not disclose the transparent feature recited in Applicant's claims. Therefore, Claims 32 and 35 distinguish the applied prior art.

The rejection of Claim 37 under 35 USC §103 as being unpatentable over JP '777 in view of McLaughlin, and further in view of Yoshida (U.S. Pat. No. 5 395 005) has been considered.

Applicant's Claims 36 and 37 have been cancelled and incorporated into independent Claim 34, which is allowable for the following reasons.

In the rejection, Yoshida was relied on for teaching a lid and a lid handle. Yoshida discloses a metallic lid body for use with a metallic container that is not collapsible. The lid device illustrated in Figure 1 of Yoshida includes a closure film 5 mounted within the perimeter of a container 1 at a packing 7 thereof. The lid body 3 has a tab portion 5a that projects beyond the rim member 6 of the lid, but does not project beyond the outer circumference at a top edge of the container 1.

There is no motivation to provide a metal lid body as disclosed by Yoshida for the collapsible container of the JP '777 patent made of materials that likely would not secure easily to such a metallic lid body.

Further, Claim 34 now recites the lid handle projecting outwardly from an edge of said lid "and outwardly beyond the bent opening edge of said container to enable removal of said lid". As discussed above, in Yoshida the tab 5a does not extend beyond the bent opening edge of said container.

Applicant's Claim 34 further recites a collapsible conical-shaped transparent container that includes "a first liquid impermeable transparent inner layer", "a second elastic and dimensionally stable transparent central layer", and "a third gas impermeable transparent outer layer".

As discussed above, the applied prior art does not disclose or suggest a transparent container, much less being formed from the three specific transparent layers recited above. Further, Claim 34 recites that "the transparency of said container enables filling thereof to be monitored from a direction perpendicular to the filling direction and enables optical identification of the food stored therein". As discussed above, the applied prior art does not have transparency disclosed therein, much less to enable the filling thereof or optical identification of food stored therein.

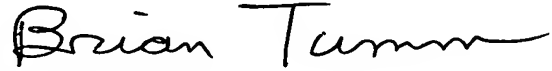
Further, Claim 34 recites that the "container is dimensionally stable" so that it "returns to essentially its original shape when the force is removed whereby the food is retracted back into an interior of the container". McLaughlin discloses a tube that changes shape as material is removed therefrom. Yoshida discloses a solid metallic container.

Claim 34 now recites "a print provided with one of said layers, said print preventing viewing through said container except for a control window on a section of said container". The rejection relies on McLaughlin for a hologram or print. Even if McLaughlin and Yoshida were combined with JP '777, which Applicant disagrees with, a control window would not result as there is no disclosure in McLaughlin, JP '777 or Yoshida of providing a control window on a section of the container.

For the above reasons, reconsideration and allowance of independent Claim 34, and Claim 35 dependent therefrom, is respectfully requested.

Further and favorable reconsideration is respectfully requested.

Respectfully submitted,



Brian R. Tumm

BRT/ad

FLYNN, THIEL, BOUTELL  
& TANIS, P.C.  
2026 Rambling Road  
Kalamazoo, MI 49008-1631  
Phone: (269) 381-1156  
Fax: (269) 381-5465

Dale H. Thiel	Reg. No. 24 323
David G. Boutell	Reg. No. 25 072
Ronald J. Tanis	Reg. No. 22 724
Terryence F. Chapman	Reg. No. 32 549
Mark L. Maki	Reg. No. 36 589
Liane L. Churney	Reg. No. 40 694
Brian R. Tumm	Reg. No. 36 328
Steven R. Thiel	Reg. No. 53 685
Donald J. Wallace	Reg. No. 43 977
Kevin L. Pontius	Reg. No. 37 512
Sidney B. Williams, Jr.	Reg. No. 24 949

Encl: Drawing Figure 4  
Postal Card

136.07/05

**Amendments to the Drawings**

Added Figure 4 illustrates a hologram and a window.